

81ST CONGRESS
1ST SESSION

H. J. RES. 229

JOINT RESOLUTION

Proposing an amendment to the Constitution
to empower Congress to regulate the use and
ownership of trade-marks.

By Mr. KEOGH

APRIL 26, 1949

Reported to the Committee on the Judiciary

H

Eugene P. Keogh
M.C.

NEW YORK.

81ST CONGRESS
1ST SESSION

H. J. RES. 229

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 1949

Mr. KEOGH introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*
3 *(two-thirds of each House concurring therein), That the*
4 following article is proposed as an amendment to the Con-
5 stitution of the United States, which shall be valid to all
6 intents and purposes as part of the Constitution when ratified
7 by the legislatures of three-fourths of the several States:

8 "ARTICLE —

9 "SECTION 1. The Congress shall have power to regulate
10 the use and ownership of trade-marks.

11 "SEC. 2. This article shall be inoperative unless it shall

- 1 have been ratified as an amendment to the Constitution
- 2 by the legislatures of three-fourths of the several States
- 3 within seven years from the date of its submission."

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82ND CONGRESS
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H. J. RES. 27

JOINT RESOLUTION

Proposing an amendment to the Constitution
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By Mr. KEOGH

JANUARY 3, 1951

Referred to the Committee on the Judiciary

Eugene Keogh

NEW YORK

July 7, 1950

Mr. Henry B. King
The United States Trade Mark Association
522 Fifth Avenue
New York 18, New York

Dear Mr. King:

I want you to know how very much
I enjoyed meeting with you, Mr. Perry,
Mr. Bonham and Mr. Liddy today and hope
you will feel free to call upon me at
any time.

With kind regards, I am

Sincerely yours,

EJK:M

The UNITED STATES TRADE MARK ASSOCIATION

522 FIFTH AVENUE, NEW YORK 18, N. Y.

MURRAY HILL 7-0853

CABLE ADDRESS: USTRADMARK, NEW YORK

HENRY B. KING
SECRETARY

JOYCE HARRIS
ASSISTANT SECRETARY

June 30, 1950

Honorable Eugene Keogh
United States House of Representatives
Washington, D. C.

Dear Congressman Keogh:

Mr. Kenneth Bonham, President, The Emerson Drug Company has asked me to confirm the luncheon date he has arranged with you for July 7th.

Arrangements have been made for our get together on Friday next at 12 noon at the Waldorf-Astoria. Luncheon will be served in a private room on the fourth floor and I will call your New York office on Wednesday to give them the room number.

Besides Mr. Bonham there will be three of us on hand to greet you, Mr. Kenneth Perry, Vice-President of Johnson & Johnson and President of this Association, Mr. Sylvester J. Liddy, Munn, Liddy & Glaccum and myself.

We are delighted for this opportunity of getting together with you and we very much appreciate your arranging your schedule so as to meet us in New York.

Looking forward to meeting you on the 7th, I am

Sincerely yours

Henry B. King
Secretary

HBK:j

JUL 3 1950

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June 30, 1950

Honorable Eugene Keogh
United States House of Representatives
Washington, D. C.

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Besides Mr. Bonham there will be three of us on hand to greet you, Mr. Kenneth Perry, Vice-President of Johnson & Johnson and President of this Association, Mr. Sylvester J. Liddy, Mann, Liddy & Glacum and myself.

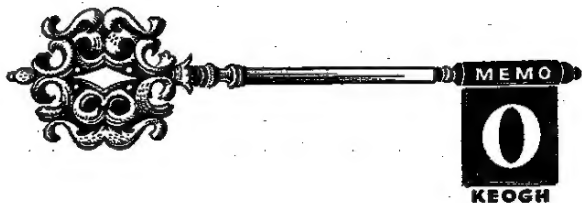
We are delighted for this opportunity of getting together with you and we very much appreciate your arranging your schedule so as to meet us in New York.

Looking forward to meeting you on the 7th, I am

Sincerely yours,

Secretary

HBK:j



Ken Bouhans

Pres Emerson Drug Co

will call for appointment
Wed or Thurs am

Ken Duffy - BBDO
C. Bismbeck -

May 20, 1949

Major Frank M. White
Suite 1634
420 Lexington Avenue
New York 17, New York

Dear Major White:

I have received the clipping which you recently sent to me, and I do not think that it is necessary for us to make any reply.

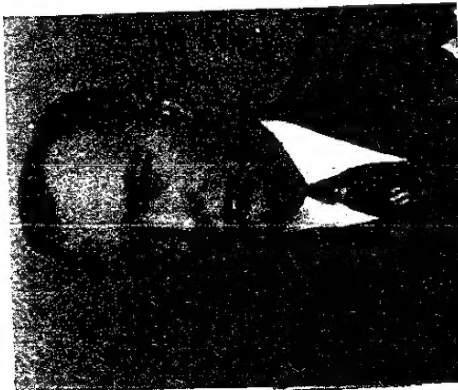
With kind regards, I am

Sincerely yours,

EJK:ALM

PRINTERS INK - NY
LAST WEEK'S ISSUE
- MAY 13
This bill would have Constitution
protect trade-marks from state registration

A PROPOSED AMEND-
ment to the Constitu-
tion, introduced by
Rep. Eugene J. Ke-
ogh (D., N. Y.),
would give the U. S.
government full pow-
er to regulate trade-
marks. His idea is to
protect trade - mark
owners from the
abuses that come from
enforced state regis-
tration. In a sense the
government already
has such power: the
Constitution allows
Congress to regulate



Rep. Keogh

interstate commerce; the Lanham Act guards trade-marks in interstate commerce from interference by the states. Mr. Keogh apparently wants to have the thing down in black and white, however. During the last few months, watching the U. S. Trade Mark Association help defeat registration in eight states, he has concluded that the evil is one that shouldn't be played with.

*E.D.R.'s Resolution
H.J. Res. 229*

May 18, 1949

Mr. Daphne Robert
The Coca-Cola Company
515 Madison Avenue
New York 22, New York

Dear Mr. Robert:

Thank you very much for your letter of
March 17, with reference to H. J. Res. 229.

I introduced the Resolution hoping to
generate some discussion pro and con solely with the
view of attempting to clarify the status of the trade-
marks. Of course, I will be glad to have any views you
care to express on it.

Sincerely yours,

EJK:ALM

The Coca-Cola Company

NEW YORK, N.Y.

DAPHNE ROBERT
ATTORNEY

ADDRESS REPLY TO
515 MADISON AVENUE
NEW YORK 22, N.Y.

May 17, 1949

Honorable Eugene J. Keogh
House Office Building
Washington, D. C.

My dear Congressman:

It has come to my attention that you have introduced H. J. Res. 229 to empower the Congress to regulate the use and ownership of trade-marks. Since Federal rights in trade-marks are acquired through their use in interstate or foreign commerce, and since the Trade-Mark Act of July 5, 1946 - which was a complete revision of the trade-mark laws of this country - was enacted under the authority of Congress under the commerce clause of the Constitution, I am wondering what the underlying purpose of your bill is. Also, if you are at liberty to divulge the sponsor of the bill, I should appreciate knowing who is supporting it.

With best wishes, I am

Yours sincerely,

Daphne Robert

Daphne Robert

p

*EJK's H. J. Res.
229*

May 12, 1949

George Link, Jr., Esq.
17 John Street
New York City

Dear Mr. Link:

This will acknowledge receipt of your letter of May 9, 1949, and I am enclosing, herewith, a copy of my bill, H. J. Res. 229.

I did not make any statement at the time I introduced this legislation.

Sincerely yours,

EJK:ALM
Encl.

McKERCHER & LINK
ATTORNEYS AND COUNSELLORS AT LAW
17 JOHN STREET, NEW YORK

CABLE ADDRESS
"MACLINK" NEW YORK

May 9, 1949

Hon. Eugene J. Keogh,
House of Representatives,
Washington, D. C.

My dear Congressman:

I notice that you have introduced into Congress
a bill for the purpose of regulating the use and
ownership of trade-marks.

I represent quite a number of trade associations.
I am anxious to give your Bill the greatest possible
publicity. I assume that you have a statement
supporting your Bill. If so, I would like to
receive a copy thereof together with the Bill
itself.

Thanking you,

Cordially and sincerely yours,

Eugene Link Jr

GL'M

MAY 10 1949

CORF LANDT 7-6350

CABLE ADDRESS
"TRAMASERVE"

AGENCIES
IN EACH STATE CAPITOL

TRADE-MARK SERVICE CORPORATION
WOOLWORTH BUILDING
233 BROADWAY
NEW YORK 7, N. Y.

STATE AND FEDERAL
INFORMATION
OF
TRADEMARKS AND LABELS
"SEARCH" AND "VIGILANCE"
CONTRACTS

March 23, 1949

Honorable Eugene J. Keogh
House of Representatives Office Building
Washington, D. C.

Re: Trade-Mark Amendment to U. S. Constitution.

Dear Mr. Keogh:

We respectfully suggest that you offer a bill in Congress to amend the United States Constitution with respect to substantive rights in trade-marks.

All previous and present trade-mark acts have been predicated upon the commerce clause of the United States Constitution, and it is remarkable to note that while the Constitution provides directly for the protection of patents and copyrights, there is no direct provision covering the registration and ownership of trade-marks. At the present time the applicant for registration of a trade-mark in the United States Patent Office does not receive "A DEED OF TRADE-MARK TITLE", but merely a certificate certifying more or less to his present common-law rights (which he has without any registration whatsoever).

We suggest an amendment to the United States Constitution to be introduced in about the following language: "CONGRESS SHALL HAVE THE POWER TO REGULATE THE USE AND OWNERSHIP OF TRADE-MARKS."

In addition to providing a basis for the Government to grant a business man a deed of title in his trade-mark, this constitutional amendment is advisable for the following reasons:

(1) To definitely fix the control of trade-marks within the United States Constitution. This is now vested in the several States under all current decisions of the United States Supreme Court. The old trade-mark acts, as well as the Lanham Act of 1946, were predicated upon the commerce clause of the United States Constitution. (Please refer to Page 206 of the Hearings on the Bill H. R. 4744, March 28, 1939.)

(2) It was held in the Trade-Mark Cases (100 U.S. 82) that the commerce clause did not apply. The Court, however, said: "The question, therefore, whether the trade-mark bears such a relation to commerce in general terms as to bring it within Congressional control, when used or applied to the classes of commerce which fall within that control, is one which, in the present case, we propose to leave undecided." (100 U.S. 82). The situation remains the same.

MAR 28 1949

To Honorable Eugene J. Keogh
Washington, D. C.

March 23, 1949

- 2 -

(3) To remove present hardships on businesses, both large and small, in respect to the rulings and regulations of the Department of Internal Revenue denying them the right to deduct trade-mark expenses on their income tax returns.

(4) To remove the very serious question now existing in the weak position of our Government in its dealing with foreign governments and their nationals in respect to conventions and treaties involving the exclusive nation-wide ownership of trade-marks.

(5) To provide a constitutional basis to correct the existing inequities in the present Lanham Act.

(6) To provide the Government with a vehicle for the coordination of the forty-eight individual State trade-mark registration laws existing at the present time.

In conclusion, the mere fact that it may take a long time to secure an amendment to the United States Constitution is no reason that we should not take the constructive step in the right direction now. An amendment to the United States Constitution giving Congress the power to legislate on trade-marks is needed so that Federal Government can give first trade-mark user a deed of title ownership to their trade-marks.

Yours very truly,

TRADE-MARK SERVICE CORPORATION



Paul Straven
President

PS:jt

The UNITED STATES TRADE MARK ASSOCIATION

522 FIFTH AVENUE, NEW YORK 18, N. Y.

MURRAY HILL 7-0853

CABLE ADDRESS: USTRADMARK, NEW YORK

KENNETH PERRY
PRESIDENT

July 31, 1950

Honorable Eugene Keogh
United States House of Representatives
Washington, D. C.

Dear Congressman Keogh:

Thank you for your recent note regarding our luncheon meeting with Messrs. Bonham, Perry and Liddy. We were delighted with the opportunity to get together with you to talk about a subject of great interest to us in our work.

I have delayed writing to you until I had a chance to contact our Trade-Mark Coordinating Committee. You will recall that I mentioned that this group consists of over twenty-five leading bar and patent law and trade associations who have since 1948 been conducting an extensive study of the Lanham Act.

I have asked the Committee to study H.J. Res. 229 and to report its views at our next meeting in September, which, by the way, will take place in Washington. I hope that we can get together at that time and that the other members of the Committee will have the opportunity of talking over this matter with you.

In the meantime, I am having some material prepared on our position with respect to your Resolution and will forward to you for your consideration within a very short time.

I spent a good deal of Wednesday of this week with Charlie Baner and he asked to be remembered to you when I wrote. Again thanking you for your kindness in meeting us in New York and for the opportunity of getting acquainted with you, I am with best wishes,

Cordially yours,

Henry B. Rugg
Secretary

HBK:h

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THE PROCTER & GAMBLE COMPANY

ARTHUR R. WENDELL
THE WHEATENA CORPORATION

Major Frank White

81st
1st

Keogh

Proposing an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks.

~~xxxxxxx~~ assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"Article _____

"Section 1. The Congress shall have power to regulate the use and ownership of trade-marks.

"Sec. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission."

HJR 27

February 14, 1951

Frank M. White, Esq.
491 Hill Street
San Luis Obispo, California

Dear Mr. White:

I want to thank you for your letter of February 11, 1951. As requested, I am enclosing herewith five copies of H.J. Res. 27, which I introduced.

With kind regards, I am,

Sincerely yours,

EJK:AY

LAW OFFICES
FRANK M. WHITE
SUITE 1000 1650 WOODWORTH
400 LEXINGTON AVENUE BLD'G.
NEW YORK 17, N.Y.

Hon Eugene J. Keogh 11th Feb., 1951
House Bldg Washington DC

Dear Mr Keogh:

I understand you have kindly introduced a new Joint Resolution in the House to amend the Constitution extending ~~its~~ jurisdiction to legislate respecting ownership and control of trade-marks for which I am grateful.

As I am to be in California for an indefinite stay, I would greatly appreciate it if you will have your office send me five copies of it to 491 Hill Street, San Luis Obispo, Cal.

Trusting you are in good health, I wish to remain.

Yours very truly
Frank M. White
Major U.S. Army Res. Ret'd

82^D CONGRESS
1ST SESSION

H. J. RES. 27

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1951

Mr. KEOGH introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*
3 *(two-thirds of each House concurring therein), That the*
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8

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10 the use and ownership of trade-marks.

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- 2 by the legislatures of three-fourths of the several States
- 3 within seven years from the date of its submission."

82ND CONGRESS
1ST SESSION

H. J. RES. 27

JOINT RESOLUTION

Proposing an amendment to the Constitution
to empower Congress to regulate the use and
ownership of trade-marks.

By Mr. KEOGH

JANUARY 3, 1951

Referred to the Committee on the Judiciary

84TH CONGRESS
1ST SESSION

H. J. RES. 3

JOINT RESOLUTION

Proposing an amendment to the Constitution
to empower Congress to regulate the use and
ownership of trade-marks.

By Mr. KROGH

JANUARY 6, 1965

Referred to the Committee on the Judiciary

Eugene P. Krogh
M.

EIGHTY-FOURTH CONGRESS

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HOUSE OF REPRESENTATIVES, U. S.
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May 28, 1956

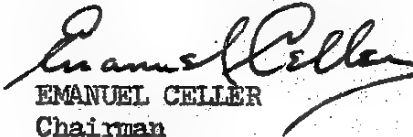
60-15-18.0-Res #3
Honorable Eugene J. Keogh
1730 House Office Building
Washington 25, D. C.

Dear Colleague:

For your information, I am enclosing copy of report
of the Department of Justice on H. J. Res. 3, of which you
are the author.

With all good wishes, I am

Sincerely yours,


EMANUEL CELLER
Chairman

EC;brg
Enc.

MAY 29 1956

May 15, 1956

Honorable Emanuel Celler
Chairman, Committee on the Judiciary
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice concerning the bill (H. J. Res. 3) "Proposing an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks".

The joint resolution would propose an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks.

The authority of Congress to enact legislation with respect to patents and copyrights is provided in Article I, section 8, clause 8 of the Constitution. This power of the Congress, however, does not extend in such degree to the field of trade-marks, since the ordinary trade-mark has no necessary relation to invention or discovery nor can it be considered as a writing. Existing Federal legislation relating to trade-marks is based upon the commerce power granted to the Congress by Article I, section 8, clause 3. It would appear, therefore, that the proposal may be intended to grant to the Congress the same degree of authority to legislate in the field of trade-marks as that body now has with respect to patents and copyrights.

The Congress presently has broad authority to legislate with respect to trade-marks and by the enactment of the Lanham Act in 1946 (15 U.S.C. 1051, et seq.) and earlier acts, evidenced a purpose to deal broadly with respect to trade-marks under its constitutional authority to regulate commerce. The bulk of trade-marks in use today come within the provisions of the federal laws in this field. This not only raises a question as to the necessity for this proposed enabling legislation but raises some doubt as to the effect of its enactment on the status and effect of the existing trade-mark laws.

Trade-marks have been used in the past as a vehicle for the violation of the antitrust laws. Section 33(b) (7) of the Lanham Act (15 U.S.C. 1115 (b) (7)) penalizes use of a mark to violate the antitrust laws, a provision indicative of the significance attached to the use of trade-marks for such purposes by the Congress.

In United States v. Timken Roller Bearing Co. 83 F. Supp. 284, (N.D. Ohio, 1949), Aff'd. 341 U. S. 593 (1951), the Court discussed at some length the trade-mark, its relation to the law of competition and the limitations of the trade-mark grant and stated:

In truth, a trade-mark confers no monopoly whatever in a proper sense, but is merely a convenient means for facilitating the protection of one's good-will in trade by placing a distinguishing mark or symbol--a commercial signature--upon the merchandise or the package in which it is sold.

To accord to trade-marks the same constitutional sanction presently given patents and copyrights, might create an environment even more susceptible to restraint of trade and injury to the public as a whole.

Accordingly, the Department of Justice is unable to recommend the enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

William P. Rogers
Deputy Attorney General

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HOUSE OF REPRESENTATIVES, U. S.
COMMITTEE ON THE JUDICIARY
WASHINGTON, D. C.

May 14, 1956

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Honorable Eugene J. Keogh
1730 House Office Building
Washington 25, D. C.

Dear Colleague:

For your information, I am enclosing copy of report
of the Departments of State and of the Department of Commerce
on H. J. Res. 3, of which you are the author.

With all good wishes, I am

Sincerely yours,


EMANUEL CELLER
Chairman

EC:brg
Enc.-2

MAY 16 1956

DEPARTMENT OF STATE

WASHINGTON

Apr 26 1956

Dear Mr. Celler:

The Department has studied H.J. Res. 3 "Proposing an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks," with respect to which you requested the Department's comments in your letter of February 7, 1955.

While the power to regulate the use and ownership of trade-marks is not within the enumerated powers of Congress, so far as foreign aspects are concerned, with which this Department is exclusively concerned, the commerce power of Congress and the treaty power, contained in the Constitution, furnish the constitutional authority for adequate arrangements between the United States and other countries for the reciprocal protection of trade-marks.

As to the purely domestic aspects of the proposal, the Department assumes that other interested agencies will make appropriate comments with respect thereto.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

For the Secretary of State:

Robert C. Hill
Assistant Secretary

The Honorable
Emanuel Celler, Chairman,
Committee on the Judiciary,
House of Representatives.

THE SECRETARY OF COMMERCE

WASHINGTON 25, D. C.

April 25, 1956.

Honorable Emanuel Celler
Chairman, Committee on the
Judiciary
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

This letter is in reply to your request of February 7, 1955, requesting the views of this Department with respect to H. J. Res. 3, a resolution

"Proposing an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks."

H. J. Res. 3 proposed an amendment to the constitution to empower Congress to regulate the use and ownership of trade-marks. In 1946 Congress enacted a statute (60 Stat. 427) dealing with the registration and protection of trade-marks used in commerce under its constitutional authority to regulate commerce. Two prior basic statutes (Act of March 3, 1881 and Act of February 20, 1905) which dealt with the registration and protection of trade-marks used in commerce were enacted under the same constitutional authority.

This Department recommends against the adoption of this resolution.

The American concept of the protection of trade-marks is, and has been since the Act of March 3, 1881, based upon the common law as distinguished from the civil law. As has been said by the Supreme Court, rights in trade-marks in this country grow out of their use on the goods rather than from mere adoption or registration; and the first user in a given State or States owns the mark in such area.

Since Congress has enacted legislation as recently as 1946 embodying this concept and has provided for the creation of certain presumptions by registration of trade-marks used in commerce which it may lawfully regulate, H. J. Res. 3 is considered to be unnecessary.

Also, adoption of this resolution is opposed for the following reasons:

1. It implies that Congress was without authority to enact trade-mark legislation under the commerce clause of the Constitution, thereby raising substantial and serious questions concerning the status and effect of trade-marks and their registration under the present and prior Acts.
2. It would provide the basis for a change in fundamental concept from the common law to the civil law, which would be anomalous under our jurisprudence.
3. It would provide the basis for Federal Control over purely intrastate commercial activities without any apparent reason or justification therefor.

This Department, therefore, recommends against the adoption of H. J. Res. 3.

Sincerely yours,

SINCLAIR WEEKS

Secretary of Commerce

THE UNITED STATES

TRADE MARK

ASSOCIATION

OFFICE OF THE PRESIDENT

522 FIFTH AVENUE
NEW YORK 36, N. Y.
MURRAY HILL 7-0853

March 7, 1955

60X5
H. J. Keogh
3
Hon. Eugene J. Keogh
House of Representatives
House Office Building
Washington 25, D. C.

Dear Mr. Keogh:


Re: House Joint Resolution 3

On behalf of the Board of Directors of The United States Trademark Association and the membership listed in the enclosed Roster, I would like to quote here a Resolution adopted at a meeting of the Executive Committee of this Association on March 4, 1955:

RESOLVED, That the President of The United States Trademark Association, on behalf of its membership, record opposition to House Joint Resolution 3, introduced in the first session of the 84th Congress by Representative Keogh. The resolution proposes an amendment to the Constitution to empower Congress to regulate the use and ownership of trademarks. This Association unanimously opposes this resolution as being contrary to the long-established principle of common law that rights in marks are acquired by use and not by registration or grant. To empower Congress to regulate the use and ownership of marks will, in our opinion result in Compulsory Federal Trademark Registration.

We respectfully request that the above Resolution by this Association be registered in the appropriate records and that careful consideration be given to the points of opposition in any deliberations on this Bill.

Very truly yours,


Sherwood E. Silliman
President

SES/g

MAR 9 1955

MUDGE, STERN, BALDWIN & TODD

(MUDGE, STERN, WILLIAMS & TUCKER)
(BALDWIN, TODD, HEROLD, ROSE & COOPER)

40 WALL STREET
NEW YORK 5, N. Y.

JULIAN L. HAGEN
HAROLD G. PICKERING
HENRY ROOT STERN
WILLIAM E. TUCKER
COUNSEL

TELEPHONE
HANOVER 2-6767

CABLE ADDRESS
"BALTUCHINS, NEW YORK"

68-11A-3
H.C.R.3
JOHN H. ALEXANDER
ELISS ANSNER
ROBERT H. BARNES
MILTON BLACK
JOHN F. BROSNAN
GEORGE R. BROWNELL
GEORGE E. BUCHANAN
CLIFTON COOPER
ELLIOTT W. EAVES
JOHN E. FREY
RANDOLPH H. GUTHRIE
MATTHEW G. HEROLD
SAMUEL S. JENNINGS
JOSEPH V. KLINE
PAUL D. MILLER
RICHARD S. RITZEL
MILTON C. ROSE
BERTRAM F. SHIPMAN
HIRAM C. TODD
JOHN WALLIS
ROBERT E. WALSH

September 6, 1955

The Honorable Eugene J. Keogh
House of Representatives Office Building
Washington 25 N.W.

Honorable Sir:

We would greatly appreciate receiving a copy
of H.J.R.3 which you introduced in January of this
year.

If a copy is available, will you please send
it to the attention of the undersigned.

Very truly yours,

TMC:L

Mudge Stern Baldwin & Todd
by McArthur

sent 9/7/55

SEP 7 1955

EIGHTY-FOURTH CONGRESS

EMANUEL CELLER, N. Y., CHAIRMAN

FRANCIS E. WALTER, PA.
THOMAS J. LANE, MASS.
MICHAEL A. FEIGHAN, OHIO
FRANK L. CHILF, KY.
EDWIN EFWILLIS, LA.
JAMES B. FRAZIER, JR., TENN.
PETER W. RODINO, JR., N. J.
WOODROW W. JONES, N. C.
E. L. FORRESTER, GA.
BYRON G. ROGERS, COLO.
HAROLD D. DONOHUE, MASS.
SIDNEY A. FINE, N. Y.
JACK B. BROOKS, TEX.
WILLIAM M. TUCK, VA.
ROBERT T. ASHMORE, S. C.
JAMES M. QUIGLEY, PA.
CHARLES A. BOYLE, ILL.

CHAUNCEY W. REED, ILL.
KENNETH E. KEATING, N. Y.
WILLIAM M. MCCULLOCH, OHIO
RUTH THOMPSON, MICH.
PATRICK J. HILLINGS, CALIF.
SHEPARD J. CRUMPACKER, JR., IND.
WILLIAM E. MILLER, N. Y.
DEAN P. TAYLOR, N. Y.
USHER L. BURDICK, N. DAK.
LAURENCE CURTIS, MASS.
JOHN M. ROBSION, JR., KY.
DE WITT S. HYDE, MD.
RICHARD H. POFF, VA.
HUGH SCOTT, PA.

HOUSE OF REPRESENTATIVES, U. S.
COMMITTEE ON THE JUDICIARY
WASHINGTON, D. C.

STAFF DIRECTOR:
BESS E. DICK

GENERAL COUNSEL:
WILLIAM R. FOLEY

LEGISLATIVE ASSISTANTS:
WALTER M. BESTERMAN
WALTER R. LEE

LAW REVISION COUNSEL:
CHARLES J. ZINN

ADMINISTRATIVE ASSISTANT:
BESSIE M. ORCUTT

February 4, 1955

Honorable Eugene J. Keogh
House of Representatives
Washington, D. C.

Dear Colleague:

The enclosed bill, of which you
are the author, has been referred to Subcommittee No. 3,
of which Representative Willis is chairman.

Cordially yours,

Emanuel Celler
EMANUEL CELLER

EC:db
Enc.

FEB 7 1955

Memo

1/7/55

E. J.K.

Mr. Zinn was over and thinks the attached change should be made in your Resolution.

A.M.

*File in call
we have a
hearing*

. 3

REPRESENTATIVES

55

resolution; which was referred
to the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*
3 *(two-thirds of each House concurring therein), That the*
4 following article is proposed as an amendment to the Con-
5 stitution of the United States, which shall be valid to all
6 intents and purposes as part of the Constitution when ratified
7 by the legislatures of three-fourths of the several States:

8 "ARTICLE —

9 "SECTION 1. The Congress shall have power to regulate
10 the use and ownership of trade-marks. ✓

11 "SEC. 2. This article shall be inoperative unless it shall

- 1 have been ratified as an amendment to the Constitution
- 2 by the legislatures of three-fourths of the several States
- 3 within seven years from the date of its submission."

84TH CONGRESS
1ST SESSION

H. J. RES. 3

JOINT RESOLUTION

Proposing an amendment to the Constitution
to empower Congress to regulate the use and
ownership of trade-marks.

By Mr. KEOGH

JANUARY 5, 1935

Referred to the Committee on the Judiciary

Congress of the United States
House of Representatives
Washington, D. C.

January 10, 1955

Honorable Samuel Celler
Chairman, Committee on the Judiciary
House of Representatives
Washington 25, D. C.

Dear Mr. Chairman:

Re: H. R. 49
H. R. 120
H. J. Res. 1

I have introduced the above legislation which has been referred to your Committee for consideration. I should appreciate it greatly if you would be kind enough to request the necessary reports from the appropriate departments.

With kind regards, I am

Sincerely yours,

E.A.H.

88th CONGRESS
2d Session

H. J. RES. 331

JOINT RESOLUTION

Proposing an amendment to the Constitution
to empower Congress to regulate the use and
ownership of trade-marks.

By Mr. KEOGH

JANUARY 6, 1964

Referred to the Committee on the Judiciary

Eugene Keogh
M.C.

83D CONGRESS
2D SESSION

H. J. RES. 331

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1954

Mr. KEOGH introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*
3 *(two-thirds of each House concurring therein), That the*
4 following article is proposed as an amendment to the Con-
5 stitution of the United States, which shall be valid to all
6 intent and purposes as part of the Constitution when ratified
7 by the legislatures of three-fourths of the several States:

8 "ARTICLE —

9 "SECTION 1. The Congress shall have power to regulate
10 the use and ownership of trade-marks.

11 "SEC. 2. This article shall be inoperative unless it shall

- 1 have been ratified as an amendment to the Constitution
- 2 by the legislatures of three-fourths of the several States
- 3 within seven years from the date of its submission."

83d CONGRESS
2d Session

H. J. RES. 331

JOINT RESOLUTION

Proposing an amendment to the Constitution
to empower Congress to regulate the use and
ownership of trade-marks.

By Mr. KEOGH

JANUARY 6, 1954

Referred to the Committee on the Judiciary

CORTLANDT 7-6350

CABLE ADDRESS
"TRAMASERVE"

AGENCIES
IN EACH STATE CAPITOL

TRADE-MARK SERVICE CORPORATION

WOOLWORTH BUILDING

233 BROADWAY

NEW YORK 7, N.Y.

TRADE-MARK SEARCHES
AND REGISTRATIONS

VIGILANCE CONTRACTS

December 30, 1954

Hon. Eugene J. Keogh
House Office Building
Washington 25, D. C.

Re: H. J. Res. 331 - Proposing an
amendment to the Constitution to
empower Congress to regulate the
use and ownership of trade-marks.

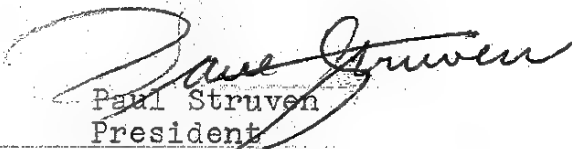
My dear Mr. Keogh:

This will acknowledge your letter of December 29, 1954,
and I am very pleased to learn that you will re-introduce
the above resolution in the new Congress. I believe that
the language of the present resolution is very suitable, and
it will be very difficult to improve since it broadly covers
all that is intended.

Thank you very kindly for your cooperation, and trusting
to have the pleasure of meeting you when I visit Washington
in early February, I am

Sincerely yours,

TRADE MARK SERVICE CORPORATION


Paul Struven
President

PS:bb

JAN 3 1955

December 29, 1954

Hon. Fritz G. Lanham
Woodley Park Towers
2737 Devonshire Place, N. W.
Washington, D. C.

Dear Fritz:

Re: H. J. Res. 331 - Proposing an
amendment to the Constitution to
empower Congress to regulate the
use and ownership of trade-marks.

This is to advise you that it is my intention to reintroduce
the above Resolution when the new Congress convenes on
January 5, 1955.

Will you please advise me prior to that date if you desire
any change in the language of the Resolution.

With kind regards, I am

Sincerely yours,

BJK:AIM

December 29, 1954

Mr. Paul Struven, President
Trade-Mark Service Corporation
233 Broadway
New York 7, New York

Dear Mr. Struven:

Re: H. J. Res. 331 - Proposing an
amendment to the Constitution to
empower Congress to regulate the
use and ownership of trade-marks.

This is to advise you that it is my intention to reintroduce
the above Resolution when the new Congress convenes on
January 5, 1955.

Will you please advise me prior to that date if you desire
any change in the language of the Resolution.

With kind regards, I am

Sincerely yours,

EJK:AIM

Edw's Trade
Mark Bill

October 7, 1954

Mr. Paul Struven, President
Trade-Mark Service Corporation
233 Broadway
New York 7, New York

Dear Mr. Struven:

While in Washington for a day, I reread your letter of September 15, 1954, together with the memorandum and want you to know that I will be glad to continue my efforts to be of assistance in this regard, subject, of course, to the decision of the people of the 9th District on November 2, 1954. For your assistance in this latter regard I am grateful too. I will look forward to seeing you.

With kind regards, I am

Sincerely yours,

EJK:AIM

September 16, 1954

Mr. Paul Struven, President
Trade-Mark Service Corporation
233 Broadway
New York 7, New York

Dear Mr. Struven:

Thank you for your letter of September 15, 1954, enclosing the memorandum regarding the necessity for a trade-mark amendment to the United States Constitution.

You may be assured that I will give this matter my careful consideration and will be pleased to have you get in touch with me when you are next in Washington.

Sincerely yours,

EJK:AIM

CORPLANDT 7-6350

CABLE ADDRESS
"TRAMASERVE"

AGENCIES
IN EACH STATE CAPITOL

TRADE-MARK SERVICE CORPORATION

WOOLWORTH BUILDING

233 BROADWAY

NEW YORK 7, N. Y.

TRADE-MARK SEARCHES
AND REGISTRATIONS

VIGILANCE CONTRACTS

September 15, 1954

Hon. Eugene J. Keogh
House Office Building
Washington, D. C.

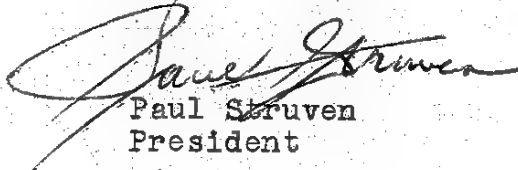
My dear Congressman:

I am pleased to enclosed herewith a short memorandum in connection with the necessity for a trade-mark amendment to the United States Constitution.

I am forwarding copies of this to other interested bar committees and business groups, and will be happy to discuss their reaction with you on my next visit to Washington.

Sincerely yours,

TRADE MARK SERVICE CORPORATION


Paul Struven
President

PS:bb
Enc.

EDK:IS 331
March 11, 1954

Norman N. Popper, Esq.
17 Academy Street
Newark 2, New Jersey

Dear Mr. Popper:

I want to acknowledge receipt of your letter of March 9, 1954, and I am enclosing a copy of H. J. Res. 331.

There have been no hearings on the Resolution, and I have not prepared a commentary on it. I would suggest that if you have any specific questions I would be glad to attempt to answer them.

Sincerely yours,

EJK:AIM
Encl.

NORMAN N. POPPER
COUNSELLOR AT LAW
17 ACADEMY STREET
NEWARK 2, N.J.
REGISTERED PATENT ATTORNEY
MITCHELL 2-1406

March 9, 1954

Hon. Eugene J. Keogh
House of Representatives
Washington, D. C.

My dear Congressman:

Will you kindly favor me with a copy of HJ Resolution 331 which you recently reintroduced, in the House of Representatives.

If you have any testimony taken at hearings or commentary on your resolution, I would be glad to receive the same.

I am chairman of the Trade Mark Committee of the New Jersey Patent Law Association, and hold myself in readiness to assist in any legislation calculated to make uniform and clear, the law of trade marks.

Respectfully yours,

Norman N. Popper/jk.

Norman N. Popper

NNP:JSK

*Bill put
H. Res 331
EJK:PM*

February 19, 1954

Mr. H. Hume Mathews
Air Reduction Company
Lincoln Building
60 East 42nd Street
New York 17, New York

Dear Mr. Mathews:

I have your letter of February 9th with reference to H.J. Resolution 331, which is a reintroduction of one I had introduced in prior congresses. The principal objective of this resolution is to make uniform and clear the legislative control of the Congress over trademarks generally.

If you want any additional information please let me know.

Sincerely yours,

EJK:M

AIR REDUCTION COMPANY

INCORPORATED

LINCOLN BUILDING • 60 EAST 42ND STREET

NEW YORK 17, N.Y.

ADDRESS REPLY TO
PATENT DIVISION
AIR REDUCTION
MURRAY HILL, N.J.

February 9, 1954

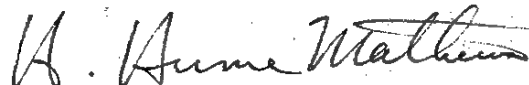
Honorable Representative Eugene J. Keogh
U. S. House of Representatives Building
Washington, D. C.

My dear Representative Keogh:

I note from the January 1954 American Patent Law Association Bulletin that you have introduced H. J. Res. 331 which proposes an amendment to the Constitution to empower Congress to regulate the use and ownership of trade-marks.

It would be very greatly appreciated if you would send me information as to the reasons for and objectives of H. J. Res. 331.

Very truly yours,



H. Hume Mathews
Chairman - Legislative Committee
New Jersey Patent Law Association

NHM/la

FEB 15 1954

THE UNITED STATES

TRADE MARK

ASSOCIATION

EXECUTIVE OFFICES

522 FIFTH AVENUE
NEW YORK 36, N. Y.
MURRAY HILL 7-0853

January 11, 1954

Honorable Eugene J. Keogh
House Office Building
Washington 25, D. C.

Dear Mr. Keogh:

We would appreciate very much your sending us two
copies of H. J. Res. 331 introduced by you on
January 6, 1954.

Thank you very much for your courtesy.

Sincerely yours,

Doris K. Meyerhoff

Doris K. Meyerhoff

DM:k

*sent
1/12/54*

CORTLANDT 7-6350

CABLE ADDRESS
"TRAMASERVE"

AGENCIES
IN EACH STATE CAPITOL

TRADE-MARK SERVICE CORPORATION

WOOLWORTH BUILDING

233 BROADWAY

NEW YORK 7, N. Y.

TRADE-MARK SEARCHES
AND REGISTRATIONS

VIGILANCE CONTRACTS

October 28, 1953

Hon. Eugene J. Keogh
1730 House Office Building
Washington 25, D. C.

Dear Mr. Keogh:

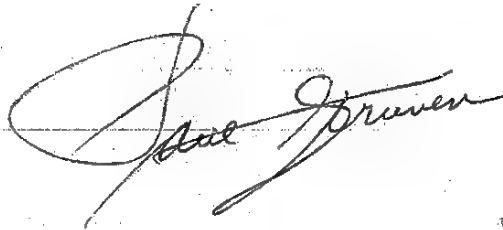
This will acknowledge your letter of October 21, 1953 as well as the copy of the United States Code Congressional and Administrative News which I received today. I find the pamphlet quite interesting and useful as I am in constant communication with the various Government agencies, and I greatly appreciate your courtesy.

I also wish to take this means of thanking you for your effort and courtesy in connection with the trade-mark amendment to the United States Constitution, and hope that you will institute the bill again in the new Congress.

Our associate I. Walton Bader, Esq. has just been appointed to the Trade Mark Committee of the American Bar Association, and he will suggest action on the Constitutional amendment to the Association through its Committee.

I also cannot refrain from thanking you for the many courtesies extended to our Mr. Frank M. White and hope that I may have the pleasure of seeing you during my next visit to Washington.

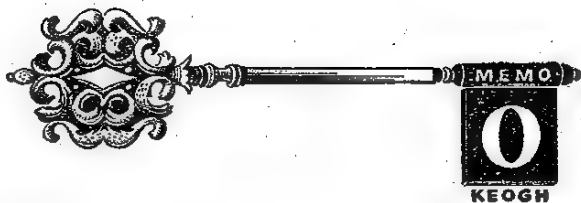
Sincerely yours,



PS:as

OCT 29 1953

OCT 29 1953



We will
probably
want to
reintroduce
our "Trade Mark"
bill again with
—

10/13/53

E.J.K.

Is the attached the bill you want to have
reintroduced?

A.M.

82^D CONGRESS
2^D SESSION

H. R. 6925

[Report No. 1516]

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1952

Mr. **KEOGH** introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 13, 1952

Reported with an amendment, referred to the House Calendar, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 1 of the Act entitled "An Act to protect trade
4 and commerce against unlawful restraints and monopolies",
5 approved July 2, 1890, be amended to read as follows:

6 "SECTION 1. (a) Every contract, combination in the
7 form of trust or otherwise, or conspiracy, in restraint of trade
8 or commerce among the several States, or with foreign na-
9 tions, is hereby declared to be illegal. Every person who
10 shall make any contract or engage in any combination or

1 conspiracy hereby declared to be illegal shall be deemed
2 guilty of a misdemeanor, and, on conviction thereof, shall
3 be punished by fine not exceeding \$5,000, or by imprison-
4 ment not exceeding one year, or by both said punishments,
5 in the discretion of the court.

6 “(b) Nothing contained herein or in any of the anti-
7 trust laws of the United States shall render illegal any
8 contract or agreement prescribing minimum prices for the
9 resale of a commodity which bears, or the label or con-
10 tainer of which bears, the trade-mark, brand, or name of
11 the producer of such commodity and which is in free and
12 open competition with commodities of the same general class
13 produced or distributed by others, when contracts or agree-
14 ments of that description are lawful under any statute, law,
15 or public policy now or hereafter in effect in any State,
16 Territory, or the District of Columbia in which such resale
17 is to be made, or to which the commodity is to be trans-
18 ported for such resale. For the purposes of this Act the
19 words ‘contract or agreement’ shall mean a contract or
20 agreement in which the party prescribing the minimum
21 prices shall be the owner of the ~~trade-mark or brand~~ *trade-*
22 *mark, brand, or name* of the commodity or commodities to
23 which this Act is applicable.

24 “(c) Nothing contained herein or in any of the anti-
25 trust laws of the United States shall render illegal the exer-

1 cise or enforcement of any right or right of action created
2 by any law, now or hereafter in effect in any State, Terri-
3 tory, or the District of Columbia, which provides in sub-
4 stance that willfully and knowingly advertising, offering for
5 sale, or selling any commodity at less than the minimum
6 prices prescribed in any such contract or agreement whether
7 the person so advertising, offering for sale, or selling is or
8 is not a party to such contract or agreement, is unfair com-
9 petition and is actionable at the suit of any person damaged
10 thereby: *Provided, however,* That in the exercise or enforce-
11 ment of any right or right of action as is exempted from the
12 antitrust laws by this subsection, it shall be a complete
13 defense to a charge of unfair competition for the defendant
14 to show that the party prescribing the minimum prices has
15 failed to make reasonable efforts to insure compliance, by
16 those in competition with the defendant, with such prescribed
17 minimum prices.

18 “(d) Whenever by contract or agreement described in
19 subsection (b) minimum resale prices may be established
20 for a commodity in any State, Territory, or the District of
21 Columbia, where such a contract or agreement is lawful, it
22 shall be an act of unfair competition, actionable at the suit of
23 any person damaged thereby, to willfully and knowingly, in
24 interstate commerce, (1) advertise for sale, offer for sale,
25 or sell or (2) have transported for sale or resale or (3)

1 deliver pursuant to a sale, or otherwise deliver, such com-
2 modity in any such State, Territory, or the District of Co-
3 lumbia, where such a contract or agreement is lawful, at
4 less than the prices so established in such contract or agree-
5 ment, whether the person so advertising for sale, offering for
6 sale, or selling is or is not a party to any such contract or
7 agreement; any person, firm or corporation, injured in his
8 or its business or property because of the violation of this
9 subsection (d) may sue for and recover the damages by him
10 or it sustained and shall be entitled to sue for and have in-
11 junctive relief against threatened loss or damage by a viola-
12 tion of this subsection (d) when and under the same con-
13 ditions and principles as injunctive relief against threatened
14 conduct that will cause loss or damage is granted by courts
15 of equity, under the rules governing such proceedings, and
16 upon the execution of proper bond against damages for an
17 injunction improvidently granted and a showing that the
18 danger of irreparable loss or damage is immediate, a pre-
19 liminary injunction may issue; action to recover such dam-
20 ages or for such an injunction may be maintained in any
21 court of competent jurisdiction of the several States, or of
22 the United States, having jurisdiction over the parties; in

1 suits within the provisions of this subsection (d) the provi-
2 sions of section 7 of this Act providing for threefold damages
3 shall not apply: *Provided*, That nothing contained herein
4 shall apply to advertisements for sale, offers for sale, or sales
5 which originate from or are directed to or are completed
6 within any State, Territory, or the District of Columbia,
7 where such contracts or agreements as are described herein
8 are not lawful by statute: *And provided further*, That in
9 any proceeding involving alleged violation of this subsection
10 it shall be a complete defense to a charge of unfair competi-
11 tion for the defendant to show that the party prescribing the
12 minimum prices has failed to make reasonable efforts to
13 insure compliance, by those in competition with the defend-
14 ant, with such prescribed minimum prices.

15 “(e) Neither the making of such contracts or agree-
16 ments as described in subsection (b) nor the exercise or
17 enforcement of any right or right of action as described in
18 subsections (c) and (d) shall be an unfair method of compe-
19 tition under section 5, as amended and supplemented, of the
20 Act entitled ‘An Act to create a Federal Trade Commis-
21 sion, to define its powers and duties, and for other purposes’,
22 approved September 26, 1914.

“(f) Nothing in this Act contained shall make lawful
 any contract or agreement, providing for the establishment
 or maintenance of minimum resale prices on any commodity
 herein involved, between manufacturers, or between pro-
 ducers, or between wholesalers, or between brokers, or be-
 tween factors, or between retailers, or between persons, firms,
 or corporations in competition with each other.”

House Calendar No. 138

82D CONGRESS
2D Session

H. R. 6925

[Report No. 1516]

A BILL

To amend the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, and for other purposes.

By Mr. KEOGH

MARCH 6, 1952

Referred to the Committee on the Judiciary

MARCH 13, 1952

Reported with an amendment, referred to the House Calendar, and ordered to be printed

Memo

January 11, 1954

As per telephone request, 12 copies of H. J. Res. 331 were sent
to:

Mr. Ralph Hardy
1771 N St., N. W.
Washington, D. C.

TRADE-MARK AMENDMENT TO UNITED STATES CONSTITUTION NEEDED

An amendment is needed to the United States Constitution giving Congress the power to legislate on the substantive law of trade-marks. This amendment is needed so that the federal government may grant a "DEED OF TITLE" on trade-marks in law. Briefly such a federal law should be enacted, after a constitutional amendment, whereby first "TRADE-MARK USERS" may become "TRADE-MARK OWNERS."

Unfortunately, registration of a trade-mark in the United States Patent Office under the present laws, or, for that matter, under any new or amended laws (without a Federal Constitutional amendment) does not and will not determine

"THE RIGHTS OF TRADE-MARK OWNERSHIP", or
"THE RIGHTS OF TRADE-MARK USE", but merely
"THE RIGHTS TO TRADE-MARK REGISTRATION"

which is meaningless.

The individual states of the United States already have trade-mark laws with the provision for the registration and protection of trade-marks under their trade-mark statutes, codes and common law. The trade-mark laws of these individual States may be amended so that the individual States may grant such a "DEED OF OWNERSHIP."

However, business and the bar has indicated (at previous public hearings) that they do not prefer the burden of securing forty-eight deeds of title by going to each one of the individual States. This is claimed to be a burden for national trade-mark users whose business extends into all of the individual States, and further to large companies who have more than one trade-mark. They say one federal trade-mark is preferable.

Therefore we have now reached the point where, without further delay, a constitutional amendment giving Congress the power to legislate on trade-marks should be started. As the originator and founder of the State trade-mark movement, the writer will frankly say that this is the only way that such a movement can be checked and the only way by which he would agree to support any federal trade-mark bill, as previously stated in the record of the public hearings on the Lanham Bill, (Present Federal Trade-Mark Registration Act).

Such a movement might stir up business to the point where they must decide either for forty-eight State laws or else eventually one broad federal law, of which everyone is certainly in favor as against forty-eight separate State trade-mark laws, whereby trade-mark owners will receive one "DEED OF TITLE", in fee simple, to be extended all over the United States -- in other words, one trade-mark exclusively to one owner for at least one class of merchandise.

At the hearings on the Lanham trade-mark act there developed a great deal of conflicting opinion by the outstanding and most eminent trade-mark authorities in the United States. For example, the Boston Bar Association was utterly opposed to the enactment of the bill into a law, while the New York City Bar Association was entirely in favor of the bill. Then again, were heard such conflicting expressions as "common law was no longer sufficient for the protection of trade-marks" and even the expression "I don't know". While it is certainly evident that these trade-mark authorities cannot agree as to certain sections in the act, it would be difficult to solve the trade-mark situation until there is a general agreement by these authorities. Everyone has agreed that trade-marks should be protected, and it is doubtful if we can find a

trade-mark user who was the first to adopt, create and use a trade-mark who did not desire a "DEED OF TITLE" to the product of his creation, or anyone who will dispute the desirability of giving protection to such prior creation. A "DEED OF TITLE" can be granted by amending the laws of the individual states and it can better be accomplished by amending the United States Constitution and then the enactment of such a law by Congress.

The writer opposed the Lanham act, primarily because that act would not give a clear deed of title ownership. In other words, first trade-mark users would still not own their trade-marks. This act, the same as the previous trade-mark laws, only determines THE RIGHT OF TRADE-MARK REGISTRATION, and it does not determine the rights of trade-mark ownership. Trade-mark owners want a deed of title on their trade-marks. They want to own them in fee simple the same as houses, real estate and other property is owned. The United States Supreme Court in the decision of U. S. DRUG CO. vs. Theo. Rectanus Co., 248 U. S. 90, said "Property in trade-marks and the right to their exclusive use, rest upon the laws of the several states, and depend on them for security and protection." Therefore, it is obvious that a Constitutional amendment is needed to give the federal government the power to legislate on the property rights in trade-marks.

Further, a trade-mark registration under the new act, does not cover intrastate commerce or even all of interstate commerce, for the simple reason that the law itself is predicated upon common law trade-mark rights and the Supreme Court in the case of U. S. Printing and Lithograph Co. vs. Griggs-Cooper & Co., 279 U. S. 156, said "Federal registration of a trade-mark under the law of 1905 does not enlarge the common law rights of a trade-mark within a State wherein the mark has not been used." In other words, common law rights do not extend into the territory where the trade-mark has not been used. It is the writer's opinion that a trade-mark user would want to own his trade-mark all over the United States and its territories, and not in just a few states.

In the case of United States vs. Steffens, 100 U. S. 82, it was held, "That the United States Patent Office has no longer any authority to decide questions of disputed title of trade-marks." This is further reason for an amendment to the constitution so that the Patent Office under a new federal law will have this authority to give a "clear trade-mark title."

Further objection to the Lanham act is that it will not provide for the registration of one trade-mark to one owner for one class of goods. In this respect the present federal trade-mark law is no exception and this condition should be improved by constitutional amendment in order that deception and confusion may be eliminated.

It has been contended that the Lanham act is the nearest approach yet to the substantive law of trade-marks by the federal government. In the case of Avenarius v. Kornely, 139 Wis. 247, the court said, "The exclusive right of a trade-mark is not created by act of Congress, and does not depend upon it for its enforcement. The whole system of trade-mark property existed (in common law) long anterior to that act and has remained in full force since its passage. The right of a trade-mark depends upon priority of appropriation." If the federal government cannot legislate on the substantive law of trade-marks without a constitutional amendment then the Lanham act would be unconstitutional if the foregoing contentions were correct. This Lanham trade-mark act would be clearly unconstitutional and in direct violation of six separate United States Supreme Court decisions as follows:

1. U. S. PRINTING AND LITHOGRAPH CO. vs. GRIGGS-COOPER & CO., 279 U. S. 156; Federal registration of a trade-mark under the law of 1905 does not enlarge the common law rights of a trade-

mark within a state wherein the mark has not been used.

2. U. S. DRUG CO. vs. THEO. RECTANUS CO., 248 U. S. 90: Property in trade-marks and the right to their exclusive use, rest upon the laws of the several States, and depend upon them for security and protection.
3. HANOVER MILLING CO. vs. METCALF, 240 U. S. 403: A new Sovereignty (the Individual States) is not a passive figure-head, but what it creates, it may condition.
4. WHEATEN vs. PETERS, 38 U. S. 591: The United States has no common law.
5. KANSAS vs. U. S., 206 U. S. 46: The individual States have the right to determine notwithstanding common law.
6. FUNK vs. U. S., 290 U. S. 371: The tendency of the U. S. Supreme Court is to no longer be bound by out-worn statements of common law and precedents not in accord with modern tendencies of thought.

The law would be further unconstitutional because of the attempt by Congress to regulate trade-marks over which they have no jurisdiction, instead of commerce over which they have jurisdiction. Further, the United States Supreme Court has never held a trade-mark an article of commerce. A trade-mark even though associated with commerce is not consumed, sold or parted with. This act cannot make it so without AN AMENDMENT to the United States Constitution. The law should be further unconstitutional whereby the federal government attempts to usurp the sovereign individual State's police power in enforcing the rights to ownership of trade-marks. The individual States already have trade-mark laws for this purpose. If this power is to be given the federal government, it should be done in the manner that the United States Constitution itself provides, namely: by an amendment to the United States Constitution.

The present federal trade-mark law (including all previous acts) has already caused more damage, confusion and useless litigation than any one law ever written in the United States. Had this law been corrected in the beginning by constitutional amendment giving trade-mark users a deed of title, there would not have been any necessity for any of the present State fair trade laws, price maintenance laws and anti-discrimination statutes or the Lanham act, because the entire trade-mark could have been controlled by the trade-mark owner with a valid deed of title.

The present Lanham act is not a correction of the weakness of the present law and business itself is apparently to blame by not making the correction itself by demanding a constitutional amendment years ago to secure legislation on the substantive law of trade-marks by which a deed of title may be issued to trade-mark users.

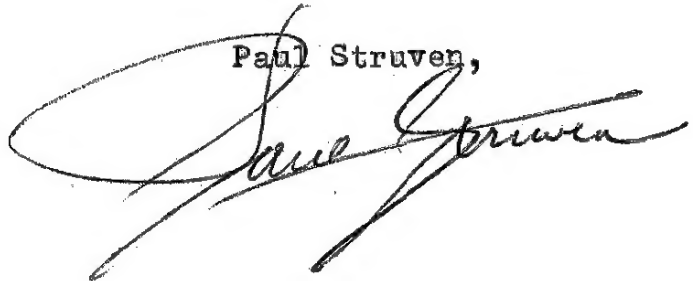
And most surprising of all is the fact that eminent trade-mark counsel during the last forty-years of the existence of the previous laws have not initiated the constitutional amendment to give trade-mark users a deed of title. And further surprising is the fact that this same question of the power of Congress to legislate on the substantive law of trade-marks was discussed in the hearings many years ago before the Committee on Patents, 59th to 70th Congresses.

Business cannot afford the luxury of litigation any longer or cost to trade-mark owners under the present federal trade-mark law. There have been over 600,000 applications for trade-marks in the U. S. Patent Office under the present federal trade-mark laws. There have been over 500,000 certificates of registration granted. What happened to the other 100,000 applications? They either went into abandonment

or else became involved in interference, opposition or cancellation proceedings and it is safe to say that it was at an average cost of \$1,000 each. This means that these applications cost the combined trade-mark owners \$100,000,000 without receiving a deed of title or having trade-mark ownership determined. Add this \$100,000,000 to the cost of the 500,000 registrations granted and add to this the sum involved in litigation by trade-mark owners in their efforts to determine their trade-mark rights in the courts in connection with trade-mark infringements, unfair competition, etc., and we find a staggering figure of hundreds of millions. TRADE-MARK OWNERS CAN NO LONGER AFFORD THE LUXURY OF LITIGATION. THEY NEED A DEED OF TITLE OWNERSHIP AND THIS DEED OF TITLE OWNERSHIP SHOULD HAVE GOVERNMENT PROTECTION.

In conclusion, the mere fact that it may take a long time to secure an amendment to the United States Constitution, is no reason that we should not take the constructive step in the right direction now. An amendment to the United States Constitution giving Congress the power to legislate on trade-marks is needed so that the federal government can give first trade-mark users "A DEED OF TITLE OWNERSHIP TO THEIR TRADE-MARKS."

Paul Struven,

A large, stylized handwritten signature in dark ink, appearing to read 'Paul Struven', written over the printed name.